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ABSTRACT

Since June 1979, when the Ohio Supreme Court declared Ohio's finance system constitutional, that system has continued to deteriorate, as evidenced by the number of districts borrowing from the school loan fund. Moreover, the supreme courts of four other states have recently declared their state financing systems unconstitutional. This paper reviews literature and case law relevant to school finance issues and analyzes Ohio's finance system to determine if there are sufficient grounds to question its constitutionality. Based on the case law summary, the unconstitutionality odds have improved significantly. The ensuing examination of disparities in school district expenditures, tax rates, teacher salaries, curricula, facilities, services, and the funding structure itself leads to the same conclusion. Since there is little doubt that Ohio's financing system is unconstitutional, the big question is whether the Ohio Supreme Court will hide behind the "Rodriguez v. San Antonio Independent School District" decision, as it did in "Cincinnati v. Walter" in 1979. Ohio's legislators are urged to change the present educational finance system in the interest of students. (23 references; 10 bar graphs) (MLH)

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OHIO'S SCHOOL FINANCE SYSTEM: Constitutional or Unconstitutional?

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OHIO'S SCHOOL FINANCE SYSTEM: CONSTITUTIONAL OR UNCONSTITUTIONAL?

On June 14, 1979, the Ohio Supreme Court held that Ohio's finance system was constitutional (Walter 79). Since that time several things have occurred which might cause that decision to be overturned. First and most important, Ohio's finance system has continued to deteriorate, as evidenced by the number of Ohio school districts which are using the school loan fund. During the 70's, sixty-four (64) school districts closed and/or borrowed funds from the state due to a lack of money. During the 80's, one hundred and thirty-five (135) borrowed funds from the state (Phyliss, 1990). There were no districts that closed due to a 1978 law which prevented schools from closing and required them to borrow funds from the Emergency School Advancement Fund.

Second, State Supreme Courts are more likely to declare the finance systems of a state unconstitutional, as evidenced by the recent rulings in New Jersey (Abbot vs. Burke 89), Texas (Edgewood vs. Kirby 89), Montana (Helena vs. Montana 89), and Kentucky (Council vs. Rose 1989). All four State Supreme Courts ruled their school finance systems unconstitutional. In light of the changes in the financial condition of Ohio's schools and the changed climate in State Supreme Courts, perhaps it's time to look at Ohio's finance system again.

The purpose of this article will be to review the literature and case law relevant to school finance issues and to analyze Ohio's finance system to determine if there are sufficient grounds to once again question its constitutionality.

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One of the early leaders in the area of school finance was Ellwood P. Cubberly, whose thoughts were well expressed by the following:

> Theoretically all the children of the state are equally important and are entitled to have the same advantages; practically this can never be quite true. The duty of the state is to secure for all as high a minimum of good instruction as is possible, but not to reduce all to this minimum; to equalize the advantages to all as nearly as can be done with the resources at hand; to place premium on those local efforts which will enable communities to rise above the legal minimum as far as possible; and to encourage communities to extend their educational energies to new and desirable undertakings. (Cubberly, 1906)

Cubberly's influence helped to shape many school finance systems. Of major concern as school finance systems developed, were the issues of equality and equity. Equality can best be described as the provision of certain minimum essentials for all students. The most common essential for comparative purposes has been expenditures per pupil. However there is considerable disagreement over the use of this factor as a means of determining equality. Benson (1974) writes:

> Obviously, providing equal dollar inputs for unequal students produces unequal results. Equal spending does not make education the "great equalizer of the conditions of men" as Horace Mann suggested in the last century. If education is to facilitate the movement of the poor and disadvantaged into the mainstream of American social and economic life; if it is to afford everyone equal probability of success (however one defines it), then equal facilities, teaching skills, and curriculums are not the answers. Additional resources must be made available to students who enter and pass through the educational system with handicaps such as language barriers for which they are not responsible.

Due to the influence of Benson and others, the emphasis in school finance systems shifted from equality to equity. Webster defines equity as "fairness" and in this regard Burrup et al (1988) states that equity means providing for equal treatment of equals and fair and reasonable, but unequal, treatment of unequals. He states that there are two aspects of equity: fairness for the children who are being educated and fairness for the taxpayers who pay the taxes.

Regarding equity or fairness to children, according to the above, all children should have a right to the same curriculum, services and facilities (input) and the right to the same achievement of school objectives (output). This may mean more input for students with handicaps so they can achieve the same output. According to Burrup (1988) more emphasis needs to be placed on output than input. Rather than comparing expenditures per pupil, comparisons need to made on how well students are achieving objectives and acquiring skills and knowledge so they can become productive citizens in our society.

Regarding equity for taxpayers, taxes should be paid according to the ability of the taxpayer to pay. The wealthy should pay more and the poor less. Also a taxpayer in a poor school district should not have to pay a larger percentage of his income than a similar taxpayer in a wealthy school district.

While the above gives the reader a feel for some of the issues involved in school finance systems, there is a need to understand how these issues have been interpreted. This will be accomplished through a review of pertinent case law in this area.

Even though the issues of equity and equality were commonly understood, the way they were implemented in the various state school finance formulas varied widely and frequently did not provide for equity or equality. On August 30, 1971 a landmark decision was made by the California State Supreme Court which has caused many states to examine their school finance formulas more closely. In **The Serrano vs. Priest (1971)** suit the court in a 6 to 1 opinion declared the state's school finance system to be unconstitutional.

The court held that the disparity in the amount of money available for education from school district to school district varied significantly and permitted some school districts to offer a higher quality of education than others. This violated the equal protection provisions of the California Constitution. The major source of the problem according to the court was the heavy reliance on property taxation which resulted in differential treatment of children and their right to an education. This could not be justified for any reason. Therefore the court ruled the finance system unconstitutional and ordered the state to provide a better and more equalized system of financing education.

Following the Serrano decision, there a number of cases in the courts on school finance issues. Twenty-two (22) cases will be reviewed. Of these twenty-two, eleven (11), including Serrano, have been found unconstitutional and eleven (11) have been found constitutional. The Serrano decision was the landmark case for those states that found their finance system declared unconstitutional. For those states that found their finance system declared constitutional, a different case, the Rodriguez case, became the landmark case.

In **Rodriguez vs. San Antonio Independent School District**, a federal court ruled that the Texas finance system violated the federal and Texas constitutions. The case was based on the charge that a number of school districts were receiving disproportionate state funds due to underassessment in many rural school districts. The case was appealed to the United States Supreme Court.

The United States Supreme Court on March 21, 1973, reversed the lower court and found the Texas finance system constitutional by a vote of five (5) to four (4). Basically, the court ruled that state taxation and education are matters of the state and that education is not a constitutional federal interest. This decision had the net effect of removing the U. S. Supreme Court from activity in this arena. The Rodriguez case is the only case on school finance to be heard by this court, and they have since refused to hear cases from Ohio (Walter 79), Wyoming (Herschler 80), and California (Serrano II 77).

These actions have sent a clear message that school finance reform must be dealt with by the state courts and legislatures. As they wrestled with the issue of school finance reform, the Serrano and Rodriquez decisions were used by plaintiffs and defendants as they argued their positions with mixed results from state to state. Those cases where school finance systems were found unconstitutional will be presented first followed by those which were found constitutional.

In October 1971, the Minnesota finance system was declared unconstitutional in the **Van Dusartz vs. Hatfield** case. The court said:

> This is not the simple instance in which a poor man is injured by his lack of funds. Here the poverty is that of a governmental unit that the State itself has defined and commissioned. The heaviest burdens of this system surely fall defacto upon those poor families residing in poor districts who cannot escape to private schools, but this effect only magnifies the odiousness of the explicit discrimination by the law itself against all children living in relatively poor districts.

The Connecticut Supreme Court in **Horton vs. Meskill (1977)** declared the state's finance system unconstitutional because it did not equalize state support between those towns which had financial ability and those which did not. Their system relied heavily on property taxes. The court further

declared that the right to an education was a basic and fundamental right which must be very closely guarded.

The Washington State Supreme Court in **Seattle vs. Washington** ruled that the state constitution required the state to provide for the education of school children. The repeated failure of levies in Seattle School District #1 did not provide for their education. The court declared the system of funding unconstitutional and ordered the state to implement a new system of school financing.

The West Virginia State Supreme Court in **Pauley vs. Kelly** (1979) declared the state's finance system unconstitutional. The court stated that education was a fundamental right under the state's constitution and that the state must provide for a "thorough and efficient" system of free schools.

The Wyoming State Supreme Court in **Herschler vs. Washakie (80)** ruled their state's finance system unconstitutional because it failed to afford equal protection, which was guaranteed by the state constitution. The court accepted the plaintiff's argument that the quality of educational services is directly related to the availability of financial resources. The court noted that poor school districts consistently had less revenue than rich districts based on a district's assessed valuation per pupil.

The Arkansas Supreme Court in the **Dupree vs. Alma (83)** case also declared their finance system unconstitutional because equal protection was denied to the students of poor districts which were property poor. The court ruled that the present system of financing schools, because of the different tax bases, did not account for the inequality and in fact widened the gap between the property rich and property poor districts.

After a five (5) year period of inactivity, State Supreme Courts in four states in rapid succession declared their finance systems unconstitutional, i.e., **Helena et al vs Montana (Montana 88), Abbott vs. Burke (New Jersey 88), Council for Better Education vs Rose (Kentucky 89),** and **Edgewood vs. Kirby (Texas 1989).** It is interesting to note that during this period all suits brought before State Supreme Courts resulted in the declaration of **"unconstitutional".** There was little new brought before the courts in this latest round of litigation. In each case, the major factor in determining the outcome of the case was the large disparity in financial resources between rich and poor districts. This resulted in a lack of equity for students and taxpayers in the districts involved, i.e., all students didn't have equal access to the same curriculum, services, and facilities, and taxpayers in poor districts had a heavier tax burden than in rich districts.

Underwood et al (90) identified eleven (11) states which had their finance systems declared constitutional. They were Arizona, Colorado, Georgia, Idaho, Maryland, Michigan, New York, Ohio, Oklahoma, Oregon, and Pennsylvania. A few cases will be selected for review to give the reader a feel for some of the thinking behind these decisions.

The Idaho Supreme Court in **Thompson vs. Engelking (1975)** ruled their state's finance system constitutional. The court decided that education was not a fundamental right, and students did not have to have equal access to services and facilities. The equal protection clause was not violated.

The Colorado State Supreme Court in **Lujan vs. Colorado State Board of Education (1982)** ruled that the state school finance system did not violate the state constitutional mandate for a thorough and uniform system of

education. They stated that local control is the objective of school finance systems even though disparities in per-pupil expenditures exist.

The Maryland Supreme Court in **Bornbeck vs Somerset (1983)** ruled that education was not a fundamental right and the system of funding education was constitutional since the equal protection clause was not violated.

Decisions in other state courts where finance systems were found constitutional were based on similar reasoning. La Morte and Williams (89) in an analysis of these court decisions wrote:

> ...state courts gave considerable weight to other rationales cited in Rodriquez and found them to be applicable under state constitutions as well.
>
> The most pervasive of these rationales involves the preservation of local control over education. In Rodriquez,
>
> local control was found to constitute the rational basis needed to support a state's justification for continuing its school finance system under the lesser standard of judicial scrutiny. State supreme courts, ...were persuaded that, although states accepted responsibility for schools, the delegation of that responsibility to local administrative units was an acceptable method of discharging the states' duty. Delegation of fiscal control to local districts was viewed as having been the intended state function when constitutional writers wrote the education clauses.

In concluding this section on a review of case law, the Rodriquez case heavily influenced or was used to declare some finance systems constitutional and the Serrano case was used where they were found unconstitutional.

The political climate of the state may have influenced the decision as well. In Ohio, for example, Governor Rhodes, a long time Republican governor, ruled the state with an iron hand. It was in 1978, that he rushed through a piece of legislation which prevented schools from closing because of financial difficulties. This occurred just prior to the 79 decision which found Ohio's system of financing schools constitutional.

To summarize: the political climate, the Rodriquez case, and the Serrano case influenced many state court decisions to declare their state's funding

system constitutional or unconstitutional. In Ohio however, it is this writer's perception that the political climate has changed. Not only has the political climate changed in Ohio but, Michael Kirst, a professor of education at Stanford University, in a New York Times article on Oct. 4th, 1989, was quoted as saying that the Rodriquez case was not a strong one, i.e., another case might go differently. He predicted that someone will organize another case to take to the United States Supreme Court. This writer believes the odds have improved significantly that Ohio's finance system would be declared unconstitutional based on the foregoing review of case law.

This next section will focus on Ohio's system of financing education. On August 1st 1990, noted finance expert John Augenblick of Denver, Colorado, at a finance symposium in Columbus, Ohio, stated that the constitutionality of Ohio's funding system could be determined by answering some key questions. If a state's finance system is constitutional it should be able to answer "no" to these key questions. The source of data for answering these questions will be booklets from the State Department of Education's Division of Computer Services and Statistical Reports, data from William Phyliss, Asst. Supt. for the State Department of Education for Ohio, and from my own personal experience as a superintendent in three Ohio school districts.

The first question is: "do the expenditures of the school districts vary greatly, and if so, is the disparity getting worse?" In 1989. the expenditures per pupil in the poorest district were $2807 and in the wealthiest they were $11,106 (Phyliss 90). Clearly, the disparity between wealth in school districts varies greatly. The wealthiest district has almost 400 % more money to spend on its students

This disparity can also be seen if all of the districts of the state are compared. Phyliss (1990) divided all of the school districts into quintiles or five groups with one group being those school districts with the least wealth, one with the most wealth, and the three other groups fell between these two. He found that the lowest group had an average per pupil expenditure (APPE) of $3121 and the highest group had $4578 or 47% more income per student (See Table #1). While the disparity is far less than the 400% above, there is still clearly quite a disparity.

The second part of the question is: **"Is it getting worse?"** In 1980 (Phyliss 1990), the APPE was $1402 for the lowest and $1836 for the highest or 31% more (see Table #2). The disparity in the last ten years has gotten worse by about 16%, i.e., 31% in 1980 vs. 47% in 1990. The answer to the first question would have to be "yes" it is getting worse over time.

The 2nd question is: **"does the wealth of the school districts vary greatly, and if so, is the disparity getting worse?"** According to the 88-89 "Costs per Pupil" booklet put out by the state department's Division of Computer Services, the district with the lowest wealth per pupil at $16,603 was Trimble Local in Athens County. The school district with the highest wealth per pupil at $497,659 was Cuyahoga Heights Local in Cuyahoga County or 2997% more wealth available per pupil.

This disparity holds true when all of the districts in the state are compared. According to Phyliss (1990), the lowest quintile in property wealth per pupil in fiscal year 1990 was $35,189 and the highest quintile was $112,284 or 319% more (see table #3).

The next part of this question is: **"is the disparity getting worse?"** According to Phyliss (1990), the lowest quintile in 1980 had a per pupil wealth of $19,789, and the highest had $53,886 or 272% more (see table #4). The disparity in wealth per pupil has increased 47% from the lowest quintile to the highest quintile. The State of Ohio would have to answer "yes" to this question.

The next question is: **"is there a relationship between a district's wealth and the amount of money they are spending?"** A comparison of tables 1 and 2 shows that the districts with the most wealth spend much more money than those with less wealth, e.g., $4158 APPE for wealthy districts vs. $2651 for poor districts. Clearly, a relationship does exist between district wealth and APPE. The State of Ohio would have to answer "yes" to this question.

The fourth question is **"is there an inverse relationship between the tax rates and APPE?"** According to Phyliss (1990), the wealthiest districts in the top quintile have a lower effective tax rate than two of the other quintiles (see table #5). The two lowest quintiles have lower effective tax rates.

A possible explanation for the lower effective tax rates in the lower two quintiles is that they have a larger tax burden compared to their average income per tax return (AIPTR) than those in the upper quintiles (see table #6). For example, a tax payer in the top quintile has an AIPTR of $31,563 vs. $22,231 AIPTR in the lowest group. In other words, a taxpayer in the highest group has 42% more money to pay his/her taxes than a taxpayer in the lowest group. Consequently, it is much more difficult to pass a tax levy in a poor school district than in a rich one. Add to this, the fact that one mill in the poorest district raises $16,000 vs. almost $500,000 in the wealthiest, and you

have another disincentive for passing tax levies in poor districts. The State of Ohio does not have to answer "yes' to this question, but it certainly can not answer "no".

The next question is: **"do teachers' salaries vary in districts with wealth and those which are poor?"** According to Phyliss (1990), average teachers' salaries for the highest quintile were $32,152 and for the lowest were $26,554 or 21% higher (see table #7). Not only were their salaries higher, but the number of teachers with masters degrees was 26% higher (See table #8). Wealthy school districts not only have better paid but teachers with more advanced training. The State of Ohio would have to answer "yes" to this question.

The next question is: **does the curriculum vary in wealthy districts verses those which are poor?"** Districts with wealth have a larger variety of advanced placement and college preparatory courses than those school districts which are poor. Evidence of this fact is the number of students going on to post-secondary education from wealthy districts vs. poorer districts. For example, districts in the top quintile send 70% of their students to post-secondary school vs. 50% for districts in the poorest quintile. Additionally, districts in the top quintile graduate 86.8 per cent of their students verses only 80.4 per cent in the lowest quintile (see table #9).

The above two indicators of the quality of the curriculum in the wealthier disticts versus the poorer are powerful, but not as powerful as the next statistic. School districts in Quintile V spent 36.65 dollars on new textbooks in fiscal year 1989 versus only 18.60 dollars by school districts in Quintile I (see table #10). This statistic proves without a shadow of a doubt

that there is a difference in curriculum between wealthy districts and poor districts. The State of Ohio would have to answer "yes" to this question as well.

Still another question is: "is there a difference in the facilities of districts which are wealthy verses those which are poor? According to Phyliss (1990), "there are gross disparities among school districts in terms of facilities." To cite one example, Norton City School District in Summit County does not have: 1) a gym in one elementary school for physical education and assemblies; 2) an auditorium for plays and programs; and 3) a swimming pool for physical education, competitive sports, or community recreation. A neighboring school district, i.e., Copley City Schools had all of the above. Their tax valuation per pupil was $130,379 vs. $53,174 for Norton. Again, the State of Ohio would have to answer "yes" to this question.

The next question is "is there a difference in the services, supplies, and materials provided for students in districts with wealth and those which are poor?" Regarding services, Perry County and Athens County schools, which have a low APPE, spend 36.3 and 34.4 per cent of their general fund for supporting services. Cuyahoga and Franklin County schools which have a high APPE spend 41.2 and 38.8 per cent of their budgets for supporting services. If one thinks of a ten to twenty million dollar budget a five (5) per cent increase in service would amount to $500,000 to $1,000,000 more available for supporting services.

Not only are services in poorer districts not as plentiful, but parents are many times asked to purchase workbooks, supplies, and materials which are furnished free of charge in wealthier districts. It would not be unusual for a

family of four, who might also be on welfare, in Perry or Athens County, to be charged over $100 in fees, while a similar family in Cuyahoga, Franklin, or Hamilton counties would be charged no fees. Furthermore, failure on their part to pay the fees, might result in class pictures being withheld, grade cards being withheld, and threatening letters from administrators being sent. The State of Ohio would have to answer "yes" to this question too.

The next question is **"are there inequities in the structure of the funding system?"** According to Phyliss (1990), the inequities or weaknesses in the structure of Ohio's current foundation formula are:

1. From 1980 to 1989 the average expenditure per pupil went from 59 per cent above the foundation level to 70 per cent above the foundation. The equalizing effect of basic aid has been lessened.

2. Categorical program allocations are not equalized. Districts get the same allocation for the same number of units regardless of local property wealth.

3. The guarantees diminish the equalization effects of the formula by giving more basic aid to districts than they would get with the formula calculation.

4. Present charge-off does not accurately measure the ability of districts to pay the local share of the basic program (because of reappraisal, the formula assumes that the district has more revenue available than it really has).

One of the greatest inequities in the structure of the funding system is item #2 above. Under the formula, it would be possible for a school district which was so wealthy that it did not qualify for basic aid to receive full funding for its special education and vocational programs and all other categorical programs. The state in effect takes money away from districts that need it, in order to give it to districts which are wealthy.

The State of Ohio would have to answer "yes" to another issue of disparity.

The last question is "does the state funding system allow school districts to adequately meet the state minimum standards?" There are many school districts which in order to meet minimum standards and stay out of the loan fund, have become very adept at some questionable practices. For example, in order to meet the teacher-pupil ratio, some superintendents code physical education, art, and music teachers as regular classroom teachers, so they don't have to hire additional classroom teachers. Also some superintendents have the principals charge students for math, spelling, and reading workbooks even though they are part of the basic instructional program, and by law should be paid for by the school district. These are just two examples of the resourcefulness being practiced by school districts in order to meet minimum standards. In this writer's opinion, the state funding system does not allow the minimum standards to be met without shortchanging some other aspect of the program. The State of Ohio's answer to this question would be "no". Unfortunately, it is the one question that should have been answered "yes!"

In summary, when Ohio's system of financing its public schools comes under close scrutiny, its constitutionality becomes highly questionable. It fails the test on all questions but one, and that one is questionable. When the weight of case law is added to Ohio's failure to pass the constitutionality test, there seems little doubt that Ohio's system of financing education is unconstitutional. The big question is; "Will Ohio's Supreme Court hide behind the Rodriquez decision as it did in Cincinnati vs. Walter in 1979, or do what it legally should do and declare Ohio's system of financing unconstitutional?" This writer believes that the education of students will be more important this time than the careers of politicians.

In conclusion, Ohio's legislators are urged to change the present system of financing education. Should they fail to do that, and if the school districts in the two lowest quintiles file a lawsuit against the State of Ohio for violating the Constitution by failing to provide "a thorough and efficient system of common schools," they risk having it declared unconstitutional.

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TABLE #1

AVERAGE PER PUPIL EXPENDITURE

GROUPED FROM HIGH TO LOW

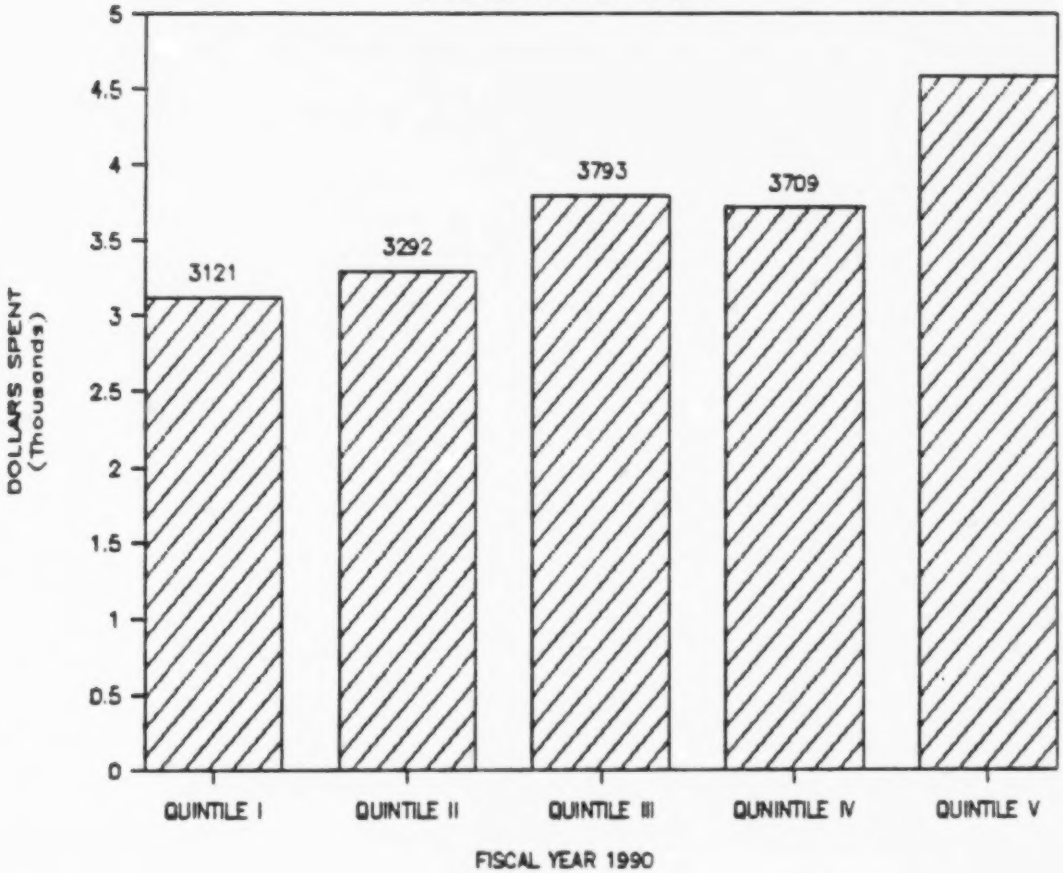
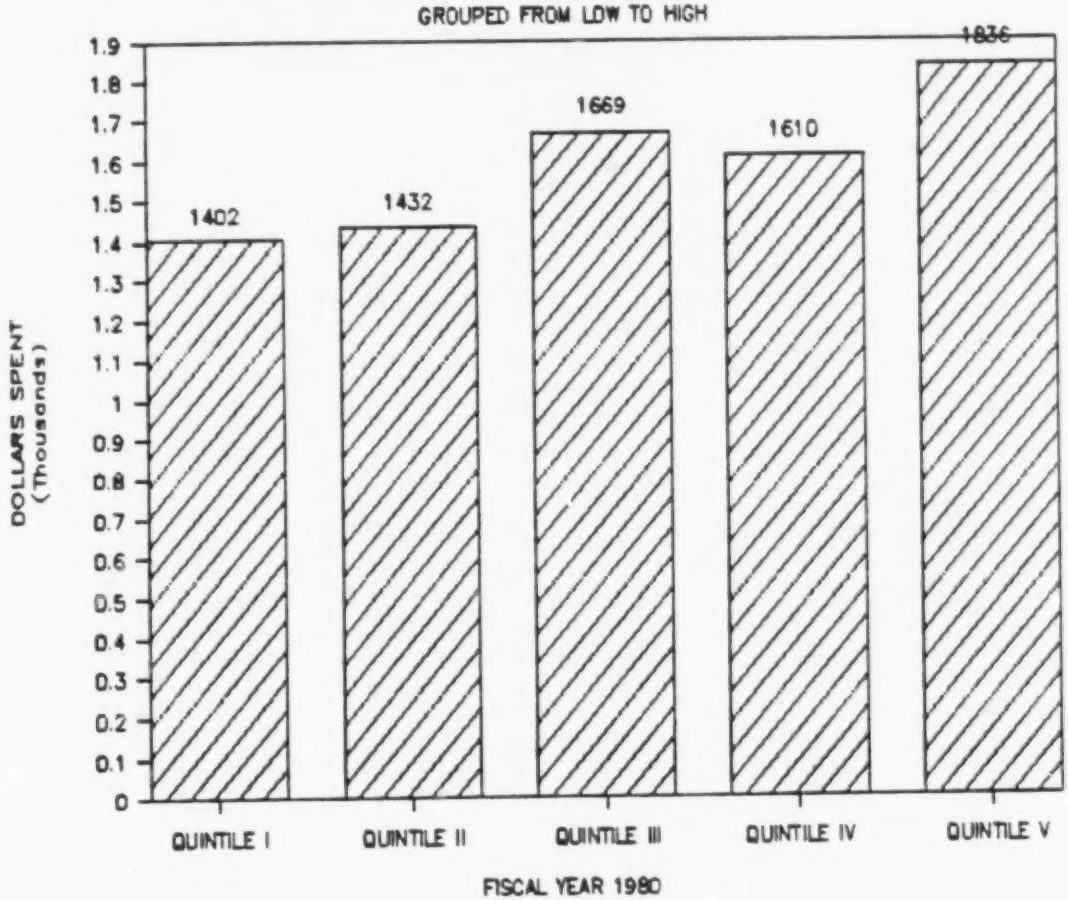


TABLE #2

AVERAGE PER PUPIL EXPENDITURES

GROUPED FROM LOW TO HIGH



FISCAL YEAR 1980

TABLE #3

ASSESSED VALUATION PER PUPIL

GROUPED FROM LOW TO HIGH

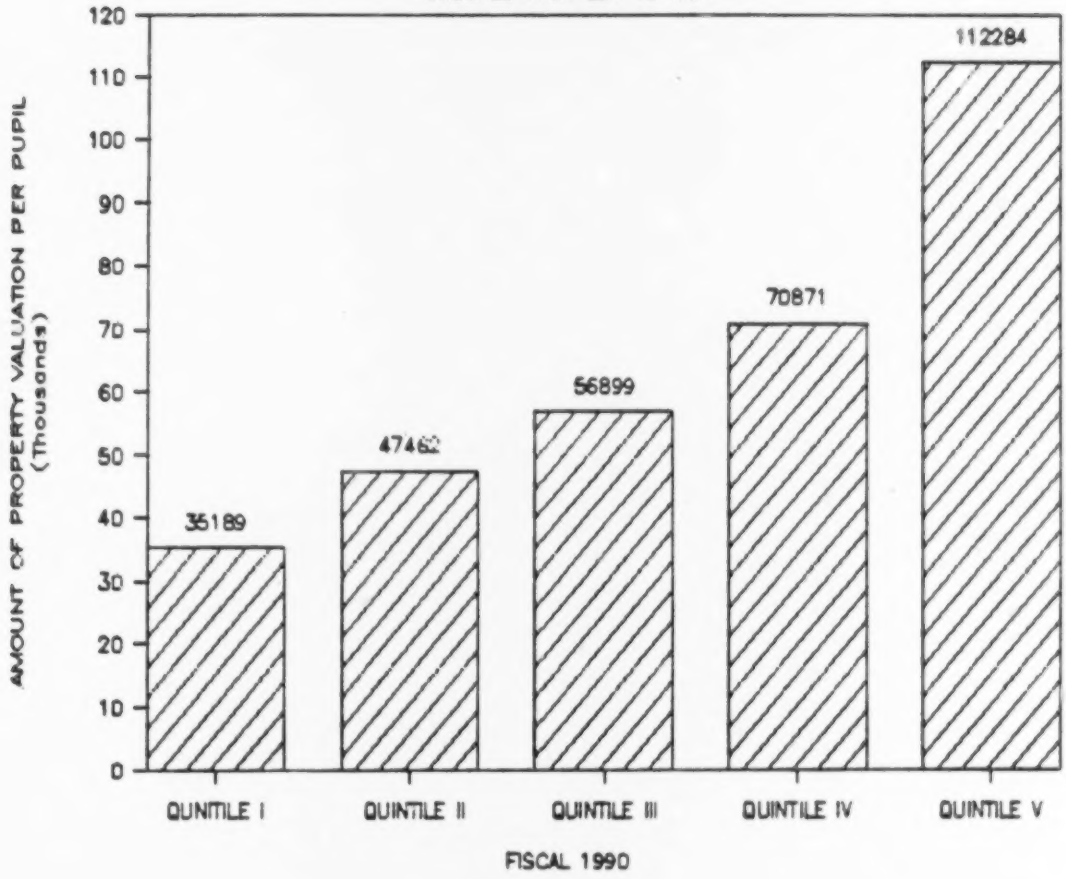


TABLE #4

ASSESSED VALUATION PER PUPIL

GROUPED FROM LOW TO HIGH

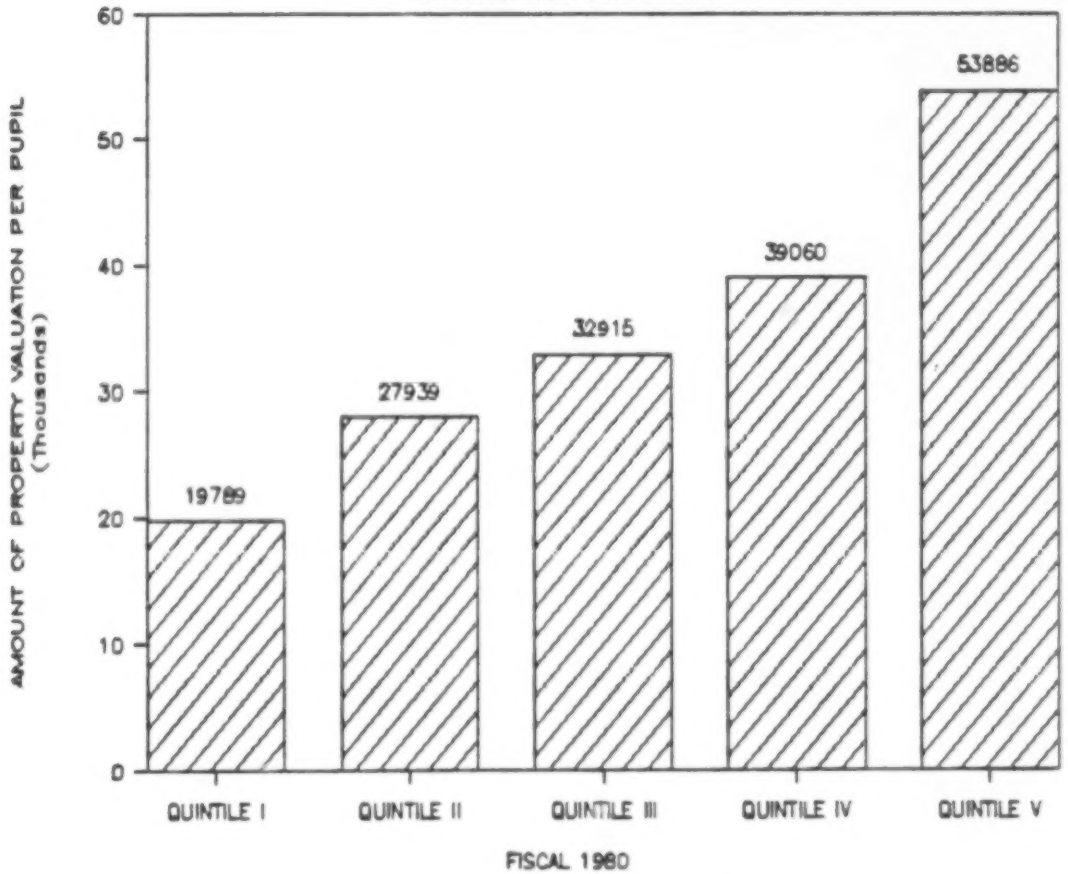


TABLE #5

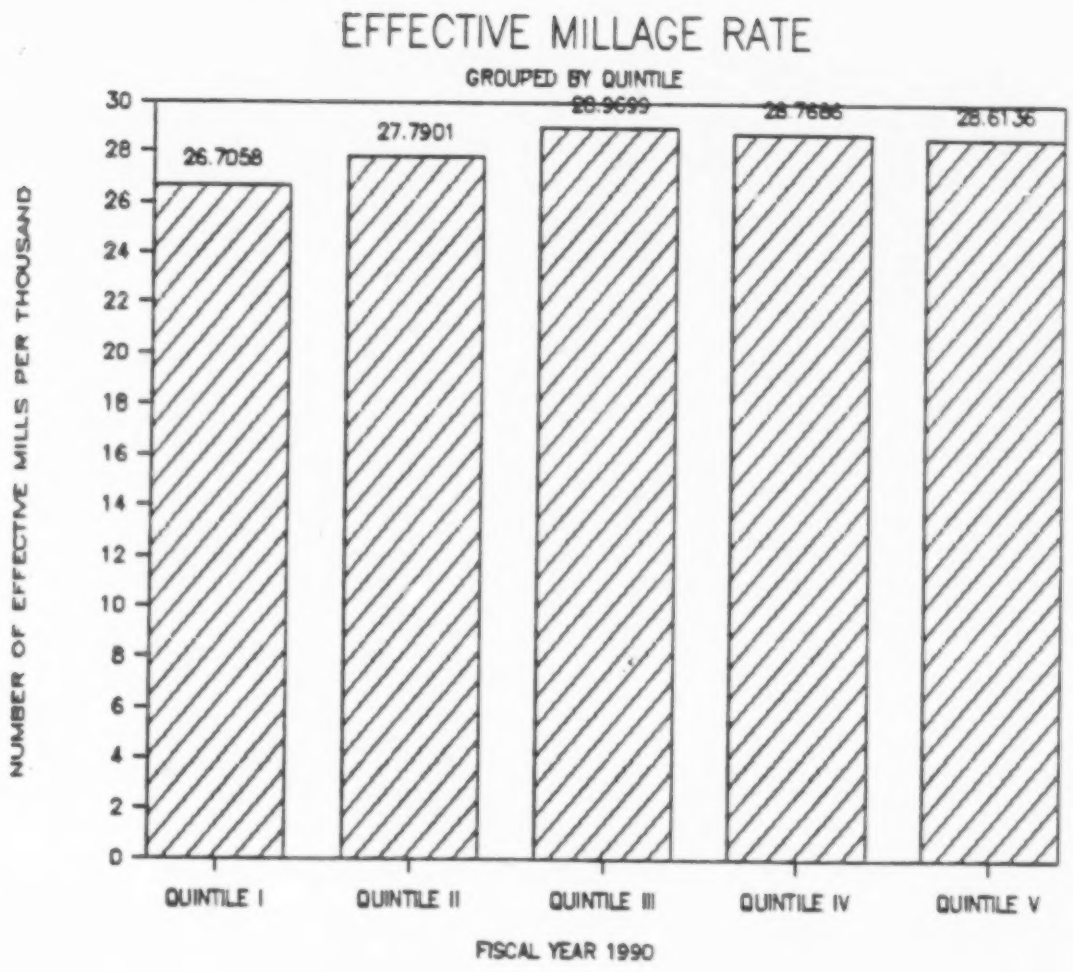

EFFECTIVE MILLAGE RATE
GROUPED BY QUINTILE
NUMBER OF EFFECTIVE MILLS PER THOUSAND
30
28
26
24
22
20
18
16
14
12
10
8
6
4
2
0
26.7058
27.7901
28.9699
28.7686
28.6136
QUINTILE I
QUINTILE II
QUINTILE III
QUINTILE IV
QUINTILE V
FISCAL YEAR 1990

TABLE #6

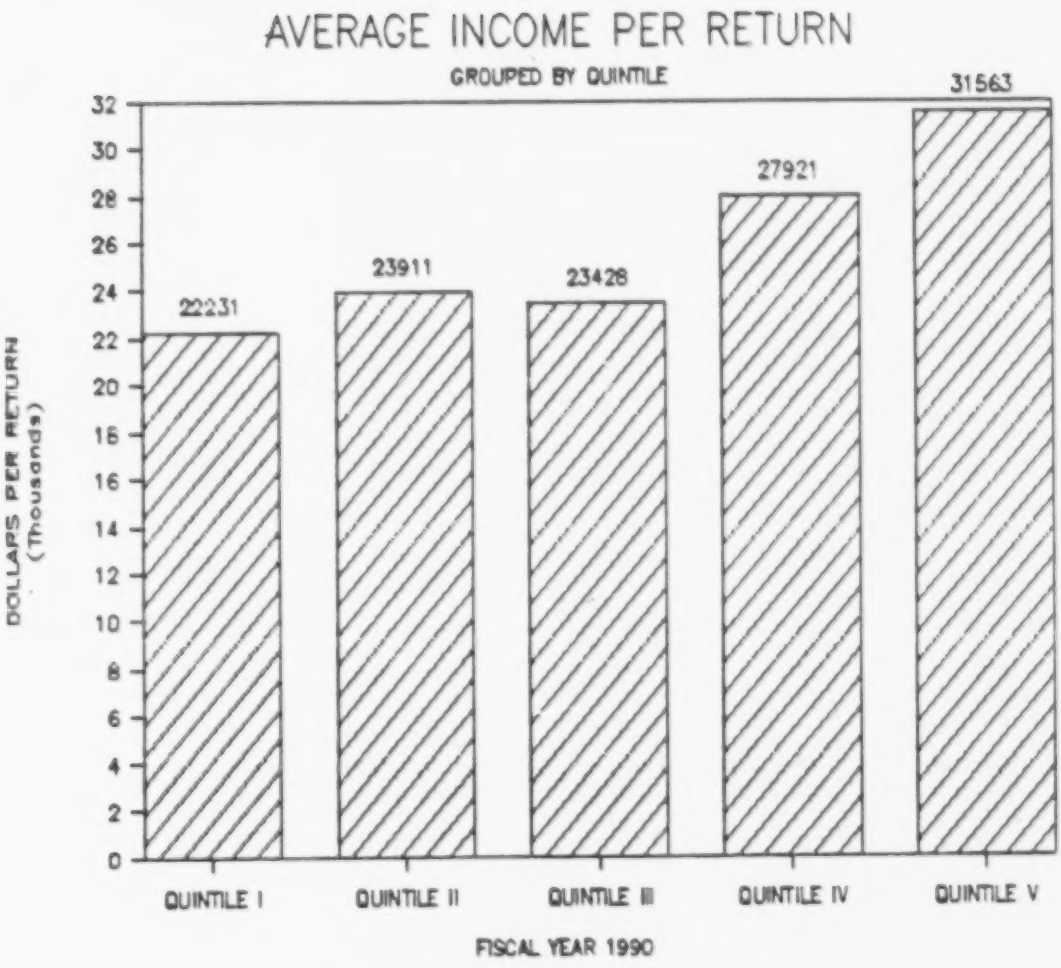
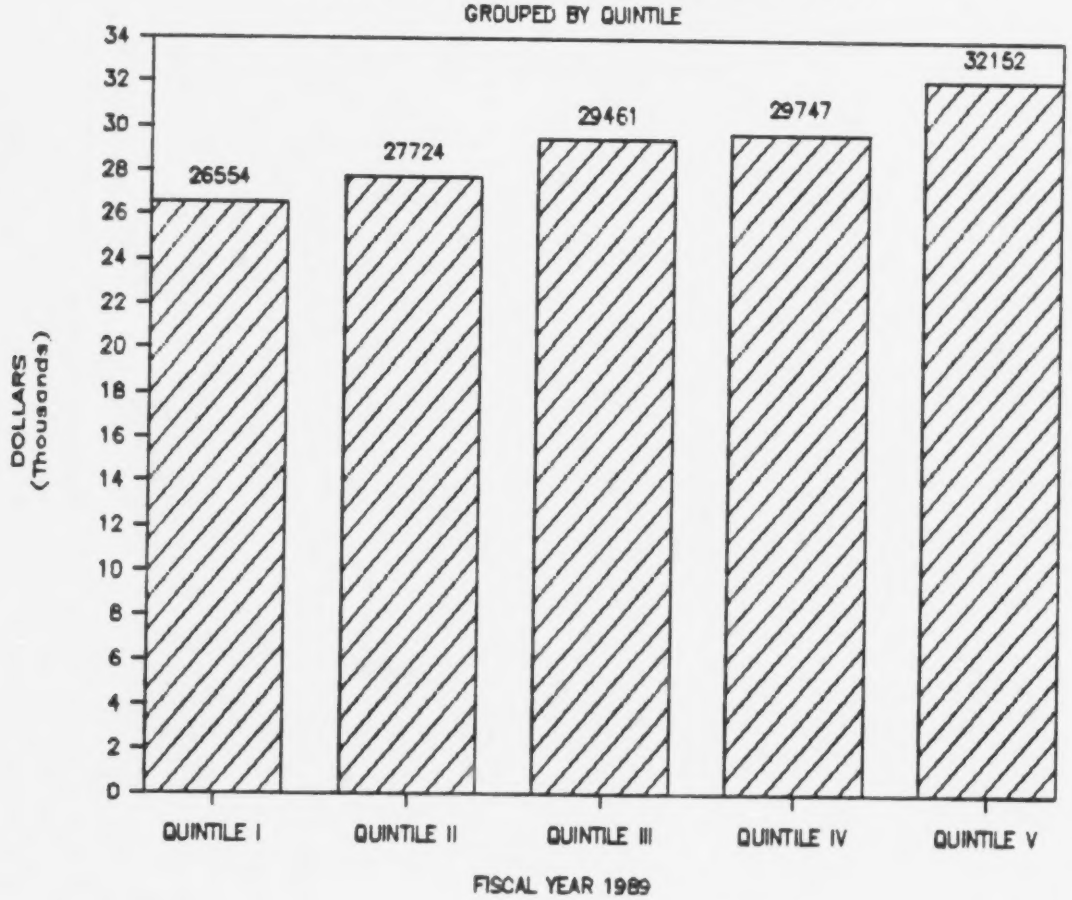

AVERAGE INCOME PER RETURN
GROUPED BY QUINTILE
DOLLARS PER RETURN
(Thousands)
32
30
28
26
24
22
20
18
16
14
12
10
8
6
4
2
0
22231
23911
23428
27921
31563
QUINTILE I
QUINTILE II
QUINTILE III
QUINTILE IV
QUINTILE V
FISCAL YEAR 1990

TABLE #7

AVERAGE TEACHERS' SALARIES

GROUPED BY QUINTILE



FISCAL YEAR 1989

TABLE #8

TEACHERS WITH MASTERS DEGREES OR HIGHER

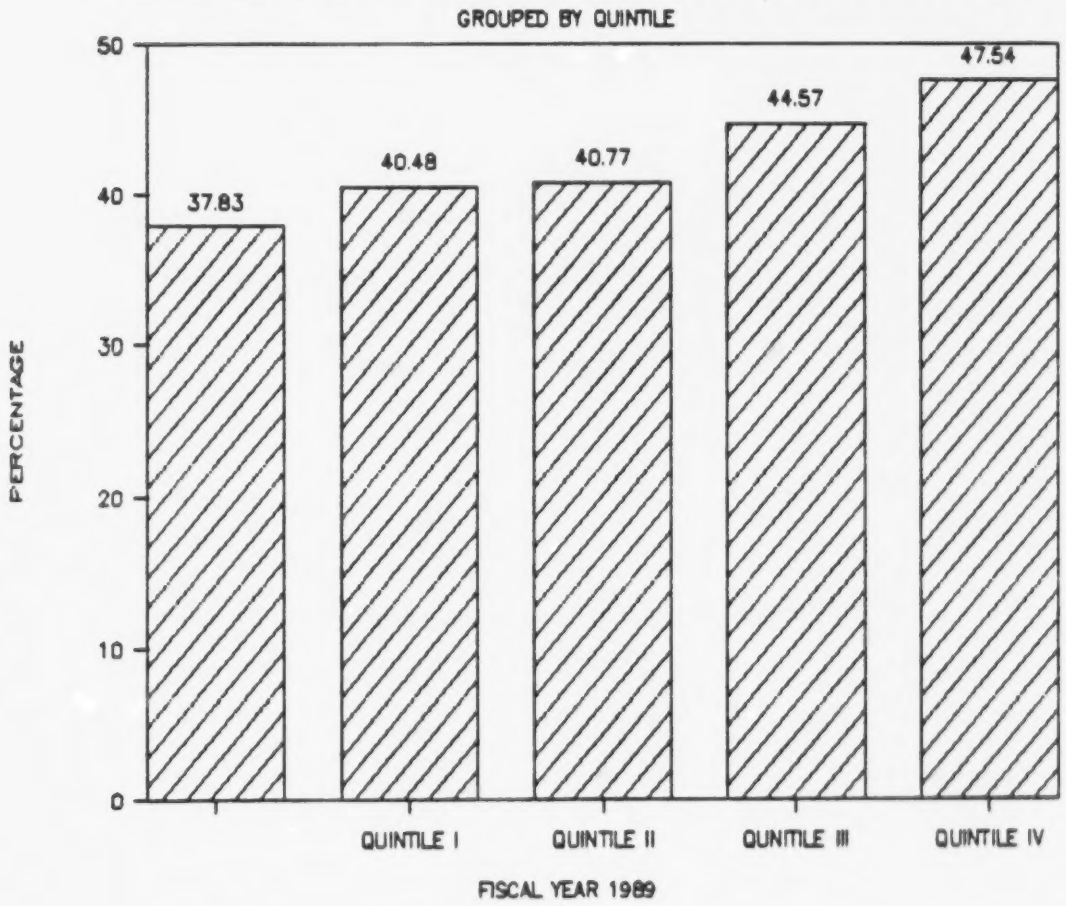


TABLE #9

COMPARISON OF GRADUATES

LOWEST QUINTILE VS THE HIGHEST

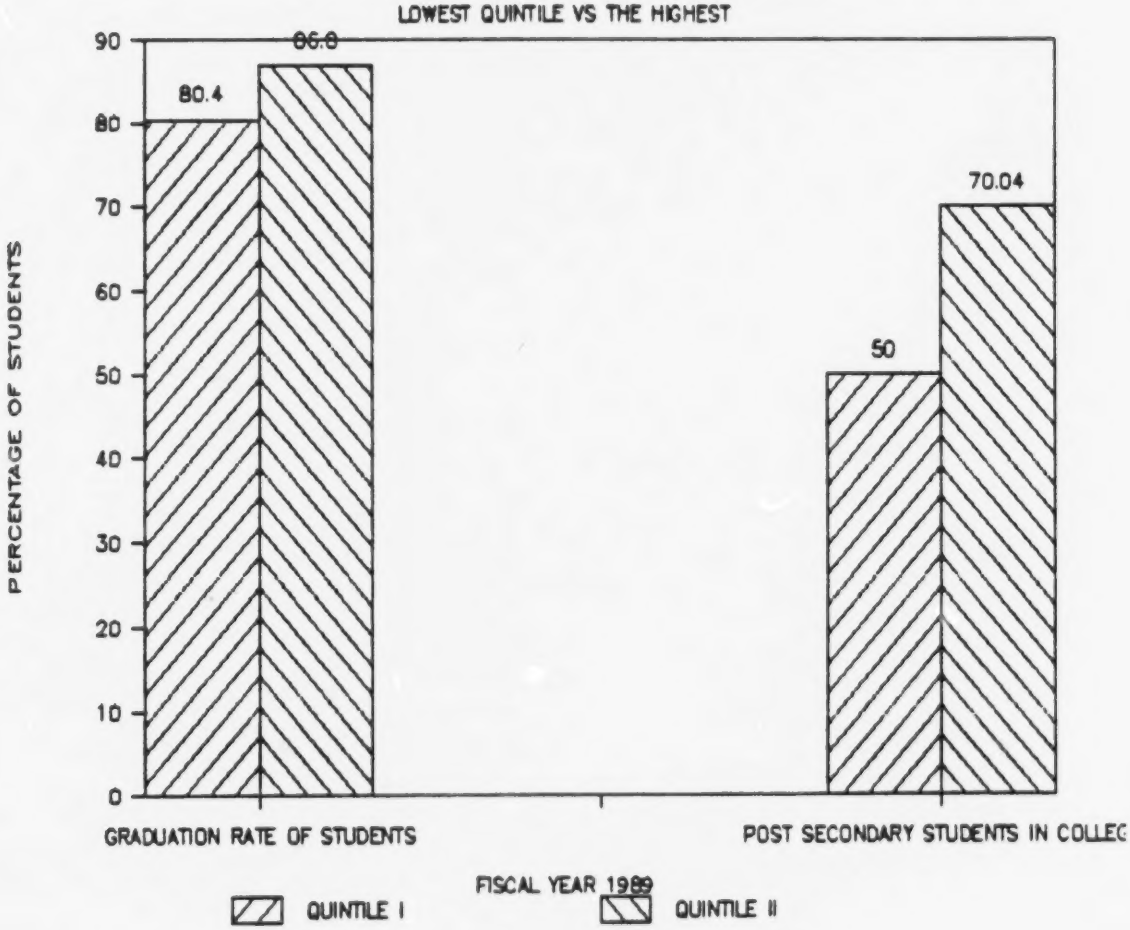
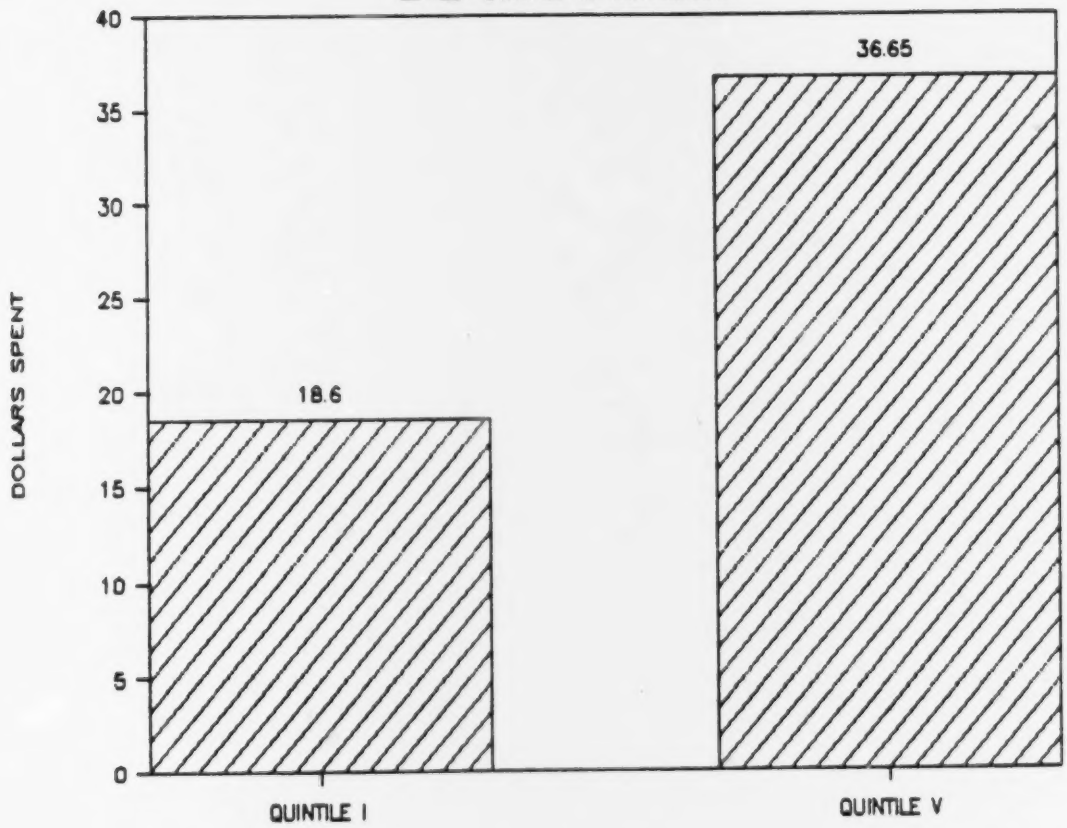


TABLE #10

NEW TEXTBOOK PURCHASES

LOWEST QUINTILE VS THE HIGHEST



FISCAL YEAR 1989